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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-490

STATE OF TENNESSEE, ex rel.,
LUCIUS P. HUDSON, et al.,
Petitioners

vs.

THE CITY OF CHATTANOOGA,
TENNESSEE, et al.,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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Respondents respectfully submit that no Writ of Certiorari should issue to review the judgment of the Supreme Court of the State of Tennessee, which Court affirmed the judgment and opinion of the trial court, the Chancery Court of Hamilton County, Tennessee.

OPINION BELOW

The opinion of the Supreme Court of Tennessee, filed July 29, 1974, is reported at 512 S.W.2d 555, and is also appended, with the trial court's opinion and final order to the Petition for Certiorari.

JURISDICTION

Respondents do not question the jurisdiction as set forth in the Petition for Certiorari.

THE WRIT SHOULD BE DENIED BECAUSE THE STATE COURT DECIDED THE ISSUES IN ACCORDANCE WITH APPLICABLE DECISIONS OF THIS COURT, OTHER FEDERAL COURTS AND THE LAW OF THE LAND.

The sole question presented for review by the Petition for Certiorari is whether the statutes of the State of Tennessee (Tennessee Code Annotated § 6-309 and § 310) which provide for annexation by a municipality by ordinance and the method to contest such annexation ordinance is violative of the Federal Constitutional right to due process of law and equal protection.

The leading case on constitutional law under the Federal Constitution as it pertains to annexation by municipalities is *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151. That case involved a challenge to a state's annexation statutes which allowed consolidation of a city into a larger municipality over the disapproval of a majority of its residents. Therein, in overruling an attack on the Pennsylvania annexation statute based on the Due Process Clause of the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment, this Court held:

> "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. . . . The number, na-

> ture and duration of the powers conferred upon these corporations and *the territory over which they shall be exercised rests in the absolute discretion of the state.* Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the federal constitution. The state, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, *expand or contract the territorial area,* unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. *All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protests. In all these respects the state is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. . . .*" (Emphasis Supplied)

The constitutionality of the very statutes here under attack has frequently and recently been upheld in both the federal and state courts.

In *Deane Hill Country Club, Inc.* v. *City of Knoxville,* 379 F.2d 321 (6th Cir.), cert. denied 389 U.S. 975, 88 S.Ct. 476, 19 L.Ed.2d 467, a case sustaining the constitutional validity of the statutes here assailed, the Court held, after quoting from *Hunter:*

> "It is clear . . . that *Hunter* precludes constitutional challenge under the Fourteenth Amendment to annexations by municipal corporations of adjoining territory on the basis of the procedure employed or authorized by the state or because of the pecuniary repercussions in the form of the ordinary incidence of

city taxation. It follows that the District Court properly dismissed the complaint herein."

Similarly, the Tennessee Supreme Court has, on many occasions, upheld these statutes from constitutional attack: *State, ex rel. Stall* v. *City of Knoxville,* 211 Tenn. 271, 364 S.W.2d 898, cert. denied 372 U.S. 914, 83 S.Ct. 728, 9 L.Ed.2d 721; *State, ex rel. Balsinger* v. *Town of Madisonville,* 222 Tenn. 272, 435 S.W.2d 803; *Witt* v. *McCanless,* 200 Tenn. 360, 292 S.W.2d 392; *State, ex rel. Morton* v. *Johnson City,* 206 Tenn. 411, 333 S.W.2d 924; *Knoxville* v. *State, ex rel. Graves,* 207 Tenn. 558, 341 S.W.2d 718.

Petitioners argue, despite *Hunter,* that annexation is a deprivation of property without due process of law. This issue has long been concluded by the Supreme Court of Tennessee which held, even prior to *Hunter,* in *Williams* v. *Nashville,* 89 Tenn. 487, 15 S.W. 364 (1891):

> "The extension of corporate limits so as to include additional territory is in no sense an impairment of the owner's liberty, nor is it a taking of private property for public use. If it were held to be so, then no municipal corporation could be established or enlarged and none of these valuable instrumentalities of the State would have a lawful existence.
>
> . . . . . .
>
> *Placing property within the corporate limits of a given town or city,* where it will be subjected to the additional burden of municipal taxation and supervision, *is not a taking of the property at all.* The ownership is in no degree changed, and the increased burden is presumed to be equaled by the increased advantages." (emphasis supplied)

This decision has recently been reaffirmed in *State, ex rel. Balsinger* v. *Town of Madisonville, supra.*

Hunter was recently applied as controlling law in several federal cases raising due process and equal protection challenges to annexations. In *Detroit Edison Co.* v. *East China Township School District,* 247 F.Supp. 296 (E.D. Mich. 1965), aff'd 378 F.2d 225 (6th Cir., 1967), cert. denied 389 U.S. 932 (1967), property owners sued for a declaration that annexation of school districts to a district where their property was located was a violation of the federal constitution. Citing *Hunter, supra,* the District Court held:

> "Any alteration of municipal boundaries is a matter within the complete discretion of the state and not confined by any rights secured by the federal constitution." 247 F.Supp. at 299.

The District Court also considered the effect on *Hunter* of *Gomillion* v. *Lightfoot,* 364 U.S. 339, 5 L.Ed.2d 110, 81 S.Ct. 125 (1960), and further held:

> "Gomillion does not diminish the authority of *Hunter* in annexation *procedure* cases." (Emphasis in the original.) 247 F.Supp. at 300.

On Appeal, the United States Court of Appeals for the Sixth Circuit affirmed in an opinion which included the following relevant discussion:

> "Two other Circuits, the Fifth and Tenth, have had occasion to pass on cases where the constitutionality of a state annexation procedure was raised. As the District Court noted, both Courts of Appeals relied on *Hunter* v. *City of Pittsburgh* in affirming dismissals of their respective cases. In *Hammonds v. City of Corpus Christi,* 343 F.2d 162 (5th Cir.), cert denied, 382 U.S. 837, 86 S.Ct. 85, 15 L.Ed.2d (1965), the court found no error in the District Court's decision which dismissed the complaint on the ground, among

> others, that *'the annexation of lands to a city has been held without exception to be purely a political matter, entirely within the power of the State Legislature to regulate'*. And in *International Harvester Co.* v. *Kansas City*, 308 F.2d 35 (10th Cir., 1962), cert. denied, 371 U.S. 948, 83 S.Ct. 503, 9 L.Ed.2d 498 (1963) after quoting from *Hunter*, stated:
>
> > 'Neither the due process clause nor the concept of equal protection is available to persons seeking to obstruct the ordinary and necessary exercise of a state's political functions. * * *' "
>
> 378 F.2d at 229. (Emphasis Supplied)

In *Gomillion*, this Court further said:

> "[I]f one principle clearly emerges from the numerous decisions of this Court dealing with taxation it is that the Due Process Clause affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a State's exercise of its political powers."

Petitioners herein, not unsurprisingly in view of the copious case law directly adverse to their position, have failed to cite any line of authority, or for that matter, even a single case which holds that state annexation laws such as Tennessee's violate either the Due Process or Equal Protection provisions of the Constitution. Annexation is a purely political matter within the power of the States to regulate.

Although not raised by the "Question Presented for Review" in the Petition for Certiorari, petitioners in the "Argument" portion of the Petition raise questions of compliance with the state annexation statutory procedures. These are purely matters of state law raising no federal

issue as noted in *Hunter* v. *City of Pittsburgh, supra.* On this very point, the Tenth Circuit recently denied federal jurisdiction to review an annexation in which procedural errors were alleged, saying:

> "We have held that error in the administration of state law is not a matter of federal cognizance under the Fourteenth Amendment due process clause." (Citing, *International Harvester Co.* v. *Kansas City, supra*) *Wallace* v. *City of Altus, Oklahoma,* 465 F.2d 420 (10th Cir., 1972)."

Petitioner then alleges that it is a violation of due process to require those challenging annexation to bear the burden of proof as to its unreasonableness. This, likewise, is a matter for the states to determine. Indeed, it is well-established in the law that statutes or ordinances are presumed valid and those attacking them must bear the burden of showing them to be invalid.[1] Petitioners' argument, logically extrapolated, is that due process requires the party with the most resources to bear the burden of proof, regardless of who is the plaintiff or defendant. It is respectfully submitted that due process requires no such result.

Instead, it has long been the law that it is up to the states to effectuate remedies, and a state is free to "choose the remedy best adapted, in the legislative judgment to protect the interests concerned, provided its choice is not unreasonable or arbitrary, and the procedure it adopts

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[1] *Goldblatt v. Town of Hempstead, New York,* 369 U.S. 590, 8 L.Ed.2d 130, 82 S.Ct. 987; *Erie R. Co. v. Williams,* 233 U.S. 685, 58 L.Ed. 1155, 34 S.Ct. 761, affg. 199 N.Y. 525, 92 N.E. 1084; *Ogden* v. *Saunders,* 12 Wheat 213, 6 L.Ed. 606; *Brown* v. *Maryland,* 12 Wheat 419, 6 L.Ed. 678.

satisfies the constitutional requirements of reasonable notice and opportunity to be heard."[2]

Petitioner also raises in "Argument" that Tennessee Code Annotated § 6-310 has an alleged "double standard," one standard for industrial areas being annexed and another for other areas being annexed. The law does set up two different classifications as recognized by the opinion of the Tennessee Supreme Court. That Court then went on to find that the classifications were reasonable and bore a natural relation to the object sought to be accomplished. This is all that is necessary to meet the requirements of Equal Protection.

> "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, 366 U.S. 420, 426, 6 L.Ed.2d 393, 399, 81 S.Ct. 1101.[3]

Here, such a state of facts as to justify the classification was expressly found.[4]

Finally, petitioners in "Argument," assert that Due Process requires that they be given a vote before they can be annexed. This issue has also been decided adversely to petioners' position. In *Adams* v. *City of Colorado Springs*, 308 F.Supp. 1397, aff. 399 U.S. 901, 90 S.Ct. 2197 26 L.Ed.2d 555, reh. den. 400 U.S. 855, 91 S.Ct. 25, 27 L.Ed.2d 93, it was held:

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[2] *Hardware Dealers' Mutual Fire Ins. Co. v. Glidden Co.*, 284 U.S. 151, 158, 52 S.Ct. 69, 71, 76 L.Ed. 214.

[3] In *Adams* v. *City of Colorado Springs*, infra, an annexation case, it was held: "The equal protection clause does not preclude creation of distinct classes. It does require that such classifications be reasonably related to some legitimate state interest."

[4] See discussion under headnote 7, 512 S.W.2d 555, 559-60.

> "We must also recognize that there is no absolute constitutional right under the *due process* clause of the Fourteenth Amendment to vote on proposed annexation. *See Sailors* v. *Board of Ed., etc.*, 387 U.S. 105, 87 S.Ct. 1549, 18 L.Ed.2d 650 (1967); *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907)."

Hence, under *Hunter* and its progeny, it is clear that the state legislatures have the ultimate control of the methods of annexation by their agency cities and the states' fundamental rights in this area should not be disturbed absent a clear showing of the deprivation of substantial personal right, which showing is not made by the Petition for Certiorari.

CONCLUSION

It is, therefore, respectfully submitted that the decision of the Tennessee Supreme Court was in full accord with the decisions of this Court and the prevailing law and the Petition for Certiorari should be denied.

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